

Below is an order of the court.



PETER C. MCKITTRICK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re
B. & J. Property Investments, Inc.,
Debtor.

Case No. 19-60138-pcm11
LEAD CASE
Jointly Administered With
Case No. 19-60230-pcm11

In re
William J. Berman,
Debtor

**STIPULATED MOTION AND
ORDER ABATING PENDING
MATTERS**

Debtors B. & J. Property Investments, Inc. (“**B&J**”) and William J. Berman (“**Berman**”), through their respective attorneys, (together, “**Debtors**”) along with Loren Hathaway, *et al.*, *through counsel*, (“**Plaintiffs**”) hereby move this Court and stipulate to entry of this order providing for the abatement of all remaining matters and proceedings in the above captioned bankruptcy cases until entry of a Final Order (as defined in the Confirmed Plan) has been entered in the state court including resolution of appeals or until B&J, Berman, or Plaintiffs(collectively

“Parties”) reopens these bankruptcy cases. The U.S. Trustee’s office does not oppose this stipulation and order. In support hereof, the parties stipulate and agree to an order as follows:

1. On January 17, 2019, B&J filed a voluntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code, commencing Bankruptcy Case No. 19-60138-pcm11 (the “*Lead Case*”).
2. On January 28, 2019, Berman filed a voluntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code, commencing Bankruptcy Case No. 19-60230-pcm11 (the “*Berman Case*”).
3. On July 2, 2019, the Bankruptcy Court entered an Amended Order Directing Joint Administration, which directed the Berman Case to be jointly administered with the Lead Case.
4. The Joint Administration Order required that most documents for the Berman Case or the Lead Case be filed in the Lead Case.
5. On October 9, 2019, Debtors filed their First Amended Joint Plan of Reorganization [Lead Case, ECF No. 245¹].
6. On January 21, 2020, the Court entered the Order Confirming Debtors’ Amended Joint Plan of Reorganization (October 8, 2019) (as Modified at Confirmation) [ECF No. 280] (the “Confirmed Plan”).
7. On April 24, 2020 this court entered an Order Granting Stipulated Motion Regarding Proof of Claim Objections and Related Deadlines [ECF No. 341; Berman ECF No. 112] abating matters related to the Saalfeld Griggs claim and objections thereto, including *In re B. & J. Property Investments, Inc.*, [ECF Nos. 287, 305, 324 and 329] in part as it relates to the Saalfeld Griggs claim and *In re Berman*, [Berman ECF Nos. 92, 93, 100, 106 and 105] in part as it relates to the Saalfeld Griggs claim.
8. The Parties are engaged in a number of other matters and proceedings pending in the Lead Case and the Berman case, all of which they have agreed to abate.

¹ Unless otherwise stated, all ECF numbers will be to the Lead Case.

9. On March 2, 2020, B&J filed an Objection to Claim 6 of Plaintiffs [ECF No. 304]. On March 25, 2020, Berman filed an Objection to Claim 5 of Plaintiffs [Berman ECF No. 104]. On May 1, 2020, Plaintiffs filed a Response to Objection to Claims of Class Action Plaintiffs in the B&J case [ECF No. 346]. (Both sets of claim objections and responses will collectively be referred to as the “Class Claim Objection Proceedings.”) The Class Claim Objection Proceedings were consolidated and all proceedings regarding them are to be jointly administered and pleadings filed under this joint case caption pursuant to the Order Granting Stipulated Motion Regarding Proof of Claim Objections and Related Deadlines [ECF No. 341].

10. On January 27, 2020 Plaintiffs filed a Motion and Memorandum for Class Certification of Hathaway Class Action Creditors [ECF No. 283]. On January 28, 2020, Plaintiffs filed a Notice of Motion for Class Certification of Hathaway Class Action along with a refiled Motion and Memorandum for Class Certification of Hathaway Class Action Creditors [ECF No. 284]. On January 28, 2020, Plaintiffs refiled the Notice of Motion for Class Certification of Hathaway Class Action [ECF No. 285]. On February 18, 2020, B&J filed B. & J. Property Investments, Inc.’s Objection to Motion and Memorandum for Class Certification of Hathaway Class Action Creditors [ECF No. 289]. On February 18, 2020, Berman filed his Response by Jointly Administered Debtor William Berman re: Opposition to Motion and Memorandum for Class Certification of Hathaway Class Action Creditors [ECF No. 290]. (These shall be referred to as the First Class Certification Motions.”) On February 26, 2020, the Court denied the plaintiffs First Class Certification Motions pursuant to its Order Denying Motion for Class Certification (Doc. 283) [ECF No. 296].

11. On March 25, 2020, Plaintiffs filed a Notice of Motion for Class Certification for Limited Purpose and Motion and Memorandum for Class Certification for Limited Purpose [ECF No. 329; Berman ECF No. 105]. On April 15, 2020 B.&J. filed its Objection to Notice of Motion for Class Certification for Limited Purpose [ECF No. 337]. On April 15, 2020, Berman filed his Response to Notice of Motion for Class Certification for Limited Purpose [Berman ECF

No. 109]. On May 1, 2020, Plaintiffs filed a Reply to Debtor B&J Property's Response to Ad Hoc Group's Motion for Class Certification [ECF No. 347]. On May 1, 2020, Plaintiffs filed a Reply to Debtor Berman's Response to Ad Hoc Group's Motion for Class Certification [Berman ECF No. 114]. (These pleadings shall be collectively referred to as the "Second Class Certification Motion.").

12. On April 21, 2020 Plaintiffs filed a Notice of Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim and Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim [ECF No. 339]. On May 5, 2020, Debtors filed Debtors' Response to Notice of Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim [ECF No. 348]. (These pleadings shall be collectively referred to as the "Bankruptcy Rule 7023 Motion.")

13. On May 22, 2020, Plaintiffs filed a Notice of Motion for Relief from Automatic Stay and Notice of Hearing Thereon and Motion for Relief from the Automatic Stay [ECF No. 357]. Also on May 22, 2020, Plaintiffs filed a Notice and Motion to Apply Bankruptcy Rule 7023 and Certify a Class re: Motion for Relief and Provide Notice to Class Member [ECF No. 359]. (These pleadings shall be collectively referred to as the "Relief From Stay Pleadings.") The Parties reached this Stipulation prior to Debtors' response due date to the Relief From Stay Pleadings.

14. On May 27, 2020, B&J filed a Motion for Sanctions Against Keith Karnes and Rank & Karnes Law PC [ECF No. 364] with respect to the Second Class Certification Motion ("Sanctions Motion"). The Parties reached this Stipulation prior to Plaintiffs' response due date to the Sanctions Motion.

15. On May 6, 2019, Plaintiff initiated an adversary proceeding in the Berman Case entitled *Loren Hathaway, on behalf of himself and all others similarly situated; Gennise Hathaway, on behalf of herself and all others similarly situated; and Heather Noble, on behalf of herself and all others similarly situated, Plaintiffs v. William John Berman, Defendant*, Adv. Pro. No. 19-06026-pcm ("Berman Adversary Proceeding").

16. B&J has given notice of its intent to file a preference action against all plaintiffs that obtained a judgement lien in *Hathaway, et al. v. B. & J. Property Investments, Inc. et al.*, Marion County Circuit Court Case No. 13C14321 (“Preference Action”). The time period for filing the Preference Action has not expired and the Parties agree that the court may enter an order extending the limitations period in order to give effect to the abatement of all remaining bankruptcy matters and proceedings pending the outcome of the state court litigation.

17. The Parties desire that all further matters and proceedings related to the Class Claim Objection Proceedings, Second Class Certification Motion, Bankruptcy Rule 7023 Motion, Relief From Stay Pleadings, Sanctions Motion, Berman Adversary Proceeding, and recommencement of the time period to file a Preference Action be abated until after a Final Order (as defined in the Confirmed Plan) has been entered in the state court including resolution of appeals and until after this court enters an order ending the abatement.

18. Given the abatement of the Relief from Stay Pleadings, no further action shall be taken by any Party or by the trial court of *Hathaway, et al. v. B. & J. Property Investments, Inc. et al.*, Marion County Circuit Court Case No. 13C14321 with respect to the Plaintiffs’ and Class Members ORCP 68 Supplemental Statement and Petition for Attorney Fees and Costs filed in the state trial court on January 23, 2020 or any other requests for supplementation of attorney fees or other relief in the trial court without first reactivating these Bankruptcy Cases and obtaining an Order Granting Relief from Stay; provided, however, that the state court appellate matter (*Hathaway et al v. B & J Property Investments, Inc et al*, Oregon Court of Appeals No. A169427) may still continue uninterrupted pursuant to the previously entered Stipulated Order Granting Limited Relief From the Automatic Stay [ECF No. 166].

19. Except as set forth above, it is expressly agreed and acknowledged that the closing of the Lead Case and the Berman Case shall not alter or impair any parties’ rights and defenses in any manner and the status quo of the objections, responses, and related pleadings shall be preserved until the above-captioned bankruptcy cases are reopened and this court enters

an order ending the abatement and determined to reactivate such matters. Nothing in this stipulated motion shall be construed as an admission or waiver of any right or defense, including the nature or extent of the parties represented by the undersigned counsel.

NOW, THEREFORE, this matter having come before the Court at a status hearing held on June 1, 2020, at which time the Court reviewed this matter and the agreement of the parties as put on the record, and determined that there was good cause therefore, and it being in the best interest of the estate, and based upon the stipulation of the parties;

IT IS HEREBY ORDERED:

1. This Stipulation is APPROVED;
2. All proceedings related to the Class Claim Objection Proceedings, Second Class Certification Motion, Bankruptcy Rule 7023 Motion, Relief From Stay Pleadings, Sanctions Motion, and Berman Adversary Proceeding shall be and are hereby abated until after a Final Order (as defined in the Confirmed Plan) has been entered in the state court proceeding of *Hathaway, et al. v. B. & J. Property Investments, Inc. et al.*, including resolution of all appeals, and until after this court enters an order ending the abatement.
3. The time period for B&J filing a Preference Action against the plaintiffs who obtained a judgement lien in *Hathaway, et al. v. B. & J. Property Investments, Inc. et al.*, Marion County Circuit Court Case No. 13C14321 ("Preference Action") has not expired and pursuant to 11 U.S.C. §§ 105, 546, and 547, and Federal Rules of Bankruptcy Procedure, 9006(b), 7001, and 7003, and the stipulation of the Parties, the time period to commence a Preference Action shall be and hereby is extended to 7 months and 16 days after the B&J case is reopened, such that the time period to commence such an action is hereby effectively tolled in the interim during the period of abatement. Notice of this extension of the period of time to commence an action under 11 U.S.C. § 547 shall be included by the Court in the notice closing the B&J case.

4. Given the abatement of the Relief from Stay Pleadings, no further action shall be taken by any Party or by the trial court in *Hathaway, et al. v. B. & J. Property Investments, Inc. et al.*, Marion County Circuit Court Case No. 13C14321 with respect to the Plaintiffs' and Class Members ORCP 68 Supplemental Statement and Petition for Attorney Fees and Costs filed in the state trial court on January 20, 2020 or any other requests for supplementation of attorney fees or other relief in the trial court without first reactivating these Bankruptcy Cases and obtaining an Order Granting Relief from Stay; provided, however, that the state court appellate matter (*Hathaway et al v. B & J Property Investments, Inc et al*, Oregon Court of Appeals No. A169427) may still continue uninterrupted pursuant to the previously entered Stipulated Order Granting Limited Relief From the Automatic Stay [ECF No. 166].

5. Except as set forth above, the closing of the Lead Case or the Berman Case shall not alter or impair any parties' rights or defenses in any manner and the status quo of the above matters as of June 1, 2020 shall be preserved until the above-captioned bankruptcy cases are reopened and this Court has entered an order ending the abatements and determined to reactivate such matters. Nothing in this stipulated motion shall be construed as an admission or waiver of any right or defense including the nature or extent of the parties represented by the undersigned counsel.

6. It is intended by the Parties and the Court that all remaining contested matters in the B&J case and the Berman case, and adversary proceeding in the Berman case, including, but not limited to, all of the matters expressly identified above, are hereby abated pursuant to this stipulation and order.

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IT IS SO STIPULATED:

MOTSCHENBACHER & BLATTNER LLP

TONKON TORP LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB No. 074027
Of Attorneys for William J. Berman

/s/ Timothy J. Conway

Timothy J. Conway, OSB No. 851752
Of Attorneys for B. &J. Property Investments,
Inc.

RANK & KARNES LAW, P.C.

/s/ Keith Karnes

Keith Karnes, OSB No. OCB No. 033521
Of Attorneys for Plaintiff Group

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **STIPULATED MOTION AND ORDER ABATING PENDING MATTERS** on the parties indicated as “ECF” on the attached List of Interested Parties by electronic means through the Court’s Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as “Non-ECF” on the attached List of Interested Parties by mailing copies thereof in sealed, first-class postage prepaid envelopes, addressed to the parties’ last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED: July 2, 2020.

TONKON TORP LLP

By /s/ Timothy J. Conway

Timothy J. Conway, OSB No. 851752

Ava L. Schoen, OSB No. 044072

*Attorneys for Debtor B. & J. Property
Investments, Inc.*

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CONSOLIDATED LIST OF INTERESTED PARTIES

In re B. & J. Property Investments, Inc.

U.S. Bankruptcy Court Case No. 19-60138-pcm11

In re William J. Berman

U.S. Bankruptcy Court Case No. 19-60230-pcm11

ECF PARTICIPANTS

- TIMOTHY J CONWAY tim.conway@tonkon.com, candace.duncan@tonkon.com, spencer.fisher@tonkon.com
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- TOBIAS TINGLEAF toby@shermlaw.com, darlene@shermlaw.com
- US TRUSTEE, EUGENE USTPRegion18.EG.ECF@usdoj.gov

NON-ECF PARTICIPANTS

B. & J. TOP 20 UNSECURED CREDITORS

Class Action Plaintiffs
c/o Brady Mertz
Brady Mertz PC
345 Lincoln St.
Salem, OR 97302

Portland General Electric
POB 4438
Portland, OR 97208

Judson's Plumbing
POB12669
Salem, OR 97330

City of Salem
555 Liberty St. SE, Room
230
Salem, OR 97301

Comcast Business
Attn: Bankruptcy Dept.
1701 John F. Kennedy Blvd.
Philadelphia, PA 19103

Pacific Source
POB 7068
Springfield, OR 97475-0068

Pacific Sanitation
POB 17669
Salem, OR 97305

US Bank
POB 6352
Fargo, ND 58125-6352

Miller Paint
390 Lancaster Dr. NE
Salem, OR 97301

HotSuff Spas & Pool
1840 Lancaster Dr. NE
Salem, OR 97305

NW Natural Gas
POB 6017
Portland, OR 97228-6017

Chateau Locks
1820 47th Terrace East
Bradenton, FL 34203-3773

Century Link
Bankruptcy Dept.
600 New Century Parkway
New Century, KS 66031

Walter Nelson Company
1270 Commercial St. NE
Salem, OR 97301

Statesman Journal
340 Vista Ave. SE
Salem, OR 97302

Pacific Screening
POB 25582
Portland, OR 97298

DEX Media
Dex Media Attn: Client Care
1615 Bluff City Highway
Bristol, TN 37620

AllAmerican Insurance
POB 758554
Topeka, KS 66675-8554

US Bank
POB 6352
Fargo, ND 58125

Susan Stoehr
24310 S Hwy 99E, Space G
Canby, OR 97013

Stephen Joye
Fischer, Hayes, et al.
3295 Triangle Dr SE #200
Salem, OR 97302

Nancy Wolf
2008 SE Sturdevant Rd
Toledo, OR 97391

Saalfeld Griggs PC
Attn: Hunter Emerick
250 Church St. SE, Suite
200
Salem, OR 97301

American Funds
POB 6007
Indianapolis, IN 46206-6007

BERMAN SECURED CREDITOR

Quicken Loans Inc.
635 Woodward Ave.
Detroit, MI 48226

BERMAN TOP 20 UNSECURED CREDITORS

Class Action Plaintiffs
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345 Lincoln St.
Salem, OR 97302

Heather Noble
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Salem, OR 97305-2060